

MONTANA LEGISLATIVE HISTORY

Chapter 277 19 79

Bill H 242 S _____ Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) Jan 24 ✓ C

_____ C

_____ C

_____ C

Date Out Jan 24 ✓ C

S. Committee on Judiciary

Hearing Date(s) Mar 01 ✓ C

_____ C

_____ C

_____ C

Mar 02 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

HOUSE BILL NO. 242

INTRODUCED BY HARPER, RAMIREZ, TROPILA

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

IN THE HOUSE

January 18, 1979	Introduced and referred to Committee on Judiciary.
January 25, 1979	Committee recommend bill do pass as amended. Report adopted.
January 26, 1979	Printed and placed on members' desks.
January 27, 1979	Second reading, do pass.
January 29, 1979	Considered correctly engrossed.
January 30, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

January 31, 1979	Introduced and referred to Committee on Judiciary.
March 3, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 6, 1979	Second reading, concurred in.
March 9, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 10, 1979	Returned from second house. Concurred in as amended.
March 14, 1979	Second reading, amendments adopted.

March 15, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 242

INTRODUCED BY

Wayne Ramirez, Rep.

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING INFORMAL CONTESTED CASE PROCEEDINGS; PROVIDING FOR JOINT WAIVING OF FORMAL PROCEEDINGS; PROVIDING FOR JOINT WAIVING OF ADMINISTRATIVE PROCEEDINGS; RESTRICTING MODIFICATION BY THE AGENCY OF THE PROPOSAL FOR DECISION; AND AMENDING SECTIONS 2-4-601, 2-4-603, AND 2-4-621, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-601, MCA, is amended to read:

"2-4-601. Notice. (1) In a contested case, all parties ~~shall must~~ be afforded an opportunity for hearing after reasonable notice.

(2) The notice ~~shall must~~ include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the statutes and rules involved;

(d) a short and plain statement of the matters asserted. If the agency or other party is unable to state

the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement ~~shall must~~ be furnished.

~~(e) a statement that a formal proceeding may be waived pursuant to 2-4-603."~~

Section 2. Section 2-4-603, MCA, is amended to read:

"2-4-603. Informal disposition and hearings — ~~waiver of administrative proceedings.~~ (1) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

~~(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then utilize informal proceedings under [section 3]. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.~~

~~(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition shall contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the~~

1 ~~additions it may consider necessary to fully present the~~
2 ~~issues, may make its decision."~~

3 **NEW SECTION.** Section 3. Informal proceedings. (1) In
4 proceedings under this section, the agency shall, in
5 accordance with procedures adopted under 2-4-201:

6 (a) give affected persons or parties or their counsel
7 an opportunity, at a convenient time and place, to present
8 to the agency or hearing examiner written or oral evidence
9 in opposition to the agency's action or refusal to act or a
10 written statement challenging the grounds upon which the
11 agency has chosen to justify its action or inaction;

12 (b) if the objections of the persons or parties are
13 overruled, provide a written explanation within 7 days.

14 (2) The record must consist of:

15 (a) the notice and summary of grounds of the
16 opposition;

17 (b) evidence offered or considered;

18 (c) any objections and rulings thereon;

19 (d) all matters placed on the record after ex parte
20 communication pursuant to subsection 2-4-613;

21 (e) a recording of any hearing held, together with a
22 statement of the substance of the evidence received or
23 considered, the written or oral statements of the parties or
24 other persons, and the proceedings. A party may object in
25 writing to the statement or may order at his cost a

1 transcription of the recording, or both. Objections shall
2 become a part of the record.

3 (3) Agencies shall give effect to the rules of
4 privilege recognized by law.

5 (4) In agency proceedings under this section,
6 irrelevant, immaterial, or unduly repetitious evidence must
7 be excluded but all other evidence of a type commonly relied
8 upon by reasonably prudent persons in the conduct of their
9 affairs is admissible, whether or not such evidence is
10 admissible in a trial in the courts of Montana. Any part of
11 the evidence may be received in written form, and all
12 testimony of parties and witnesses must be made under oath.
13 Hearsay evidence may be used for the purpose of
14 supplementing or explaining other evidence, but it is not
15 sufficient in itself to support a finding unless it is
16 admissible over objection in civil actions.

17 (5) A party may petition for review of an informal
18 agency decision pursuant to part 7 of this chapter.

19 Section 4. Section 2-4-621, MCA, is amended to read:

20 "2-4-621. When absent members render decision --
21 proposal for decision and opportunity to submit findings and
22 conclusions ~~-- modification by agency.~~ (1) When in a
23 contested case a majority of the officials of the agency who
24 are to render the final decision have not heard the case--or
25 read--the record, the decision, if adverse to a party to the

proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision.

(2) The proposal for decision ~~shall~~ must contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing unless he becomes unavailable to the agency.

(3) The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record. In the event a court, in reversing an agency's order, finds that the agency action was done in bad faith or maliciously, the court may award attorney fees and

costs to the aggrieved prevailing party.

(4) A hearing officer who is a member of an agency adjudicative body may participate in the formulation of the agency's final order, provided he has completed all his duties as hearing officer."

-End-

HB 242

STATE OF MONTANA

REQUEST NO. 66-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 19, 19 79, there is hereby submitted a Fiscal Note for HB 242 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

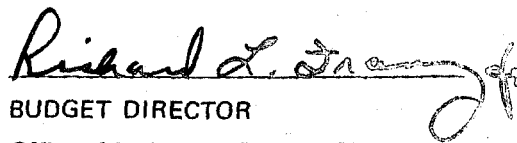
HB 242 is an act to create informal contested case proceedings; providing for joint waiving of formal proceedings; providing for joint waiving of administrative proceedings; restricting agency modifications of the proposal for decision; and amending Sections 2-4-601, 2-4-603 and 2-4-621, MCA.

FISCAL IMPACT:

The fiscal impact of this bill will be minimal.

COMMENTS:

Agency comments and OBPP investigations indicate that concrete estimates on the fiscal impact of this bill are not possible. If any fiscal impact is noted it should reduce state expenditures through reduction of formal, contested case proceedings where consultant services are acquired.


BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1/25/79

Judiciary COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 225	criminal penalty for permitting livestock to enter or remain unlawfully	1/17	Conroy	Monday 22nd	do pass-amend	1/24
HB 226	county attorney may not be appointed counsel for a minor in divorce, etc.	1/17	Conroy	Tuesday 23rd	do pass-amend	1/24
HB 229	include district court judges in county budget law	1/17	Sales	Tuesday 23rd	do pass-amend	1/24
SB 63	misrepresentation of insurance policies	1/17	Anderson	Tuesday 23rd	concurr	1/24
HB 238	impose sanctions on & recover payments from providers & engage in improper activities etc.	1/18	Lund	Tuesday 23rd	pass-amend rereferred 1/31	1/29
HB 242	creating informal contested case proceedings, etc.	1/18	Harper	Wednesday 24th	pass-amended	1/25

The regular meeting of the Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building on Wednesday, January 24, 1979. All members were present with exception of Representative Carl Seifert.

Scheduled for hearing were House Bills No's 242, 270, and Senate Bills 33, 56, and 41.

SENATE BILL NO. 56: Senator Steve Brown explained the bill briefly and said that he would ask that Jim Beck go into it further.

JIM BECK: Chief Highway Attorney. The bill was formulated at our request. A committee hearing was mandatory in all condemnation cases. He said after going through the body of the bill that there are no evidentiary rulings. There is always a trial de nova unless both sides stipulate. He explained what he meant by this further after a question from one of the members.

There were no other proponents, no opponents and no further discussion and the hearing closed on Senate Bill No. 56.

SENATE BILL NO. 41: Senator Steve Brown said this is to clarify and revise the laws relating to courts. It also applies to district judges and the supreme court judges. It said it tried to put them on per diem expense like everybody else. The reduction was unconstitutional. He went on and explained further.

JOAN MAYER: Staff Attorney for Legislative Counsel. She said the bill changed judge to judicial officer. She went through the bill section by section and explained it. It was mostly for clarification of terminology.

There were no proponents and no opponents and no discussion and the hearing closed on Senate Bill No. 41.

SENATE BILL NO. 33: Senator Van Valkenburg asked that the committee excuse him and Joan Mayer would explain the bill, since it is a recode bill, an act to revise the laws relating to remedies. She went through the bill and explained the changes. There were no substantive changes, only updating of language and deleting some cross-references.

There was no discussion and the hearing closed on Senate Bill 33.

HOUSE BILL NO. 242:

Representative Harper stated this bill was introduced by request of the Code Commissioner. One of our duties is to suggest improvements to the procedures act. On page 3 he presented an amendment.

BOB PYFER:

Proponent. I think that Representative Harper has done a good job and I have nothing further to add.

There were no opponents and no discussion and the hearing closed

on House Bill No. 242.

HOUSE BILL NO. 270:

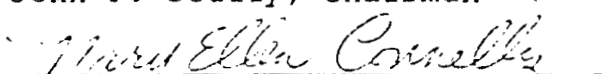
Representative Kemmis as the sponsor of the bill said this bill is to clarify the rule against perpetuities. It is common law dating back 800 years and is a complete headache to law students. Basically the idea is to stop people from setting up a conveyance in the future that goes on and on and on against a life estate in the future. He expanded on this more fully and said that this bill is to make it clear.

After much laughter and some minor discussion the hearing closed on

House Bill No. 270.

The meeting adjourned and after a brief recess went into executive session to take action on pending bills.

Adjournment at 9:00 a.m.


John P. Scully, Chairman

Mary Ellen Connelly, Secretary

JUDICIARY COMMITTEE
EXECUTIVE SESSION
January 24, 1979

Following the regular meeting the committee went into executive session and took action on the following bills. The meeting was called to order by Chairman Scully at 9:00 a.m. in Room 436 on Wednesday, January 24, 1979. All members were present.

HOUSE BILL NO. 148:

Representative Keyser reported to the full committee the findings of the sub-committee and offered their recommendation. (copy attached) Representative Keyser moved the adoption of the committee recommendation and the motion carried with the vote unanimous.

Representative Keyser moved to table the bill, and Larry Weinburg will prepare a committee bill. The motion carried with the vote unanimous.

SENATE BILL NO. 4:

Mr. Weinburg reported to the committee on research he had been doing. The history did not give much information. He proposed a series of amendments.

Representative Kemmis moved to strike "satisfaction" and insert "discharge and release" wherever it appeared in the bill. The motion carried with the vote unanimous.

Representative Kemmis moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Kemmis moved to place the bill on the consent calendar. The motion carried since the vote was unanimous. The bill will go to the consent calendar.

HOUSE BILL NO. 184:

Representative Kemmis reminded the committee that this was the bill that revises the criminal procedure, both search a person and seize a person, which wording bothered him a great deal. He moved several clean-up amendments wherever the words "persons to be seized" appeared. The motion carried with the vote unanimous.

Representative Iverson moved "do pass as amended" and the motion carried with the vote unanimous. Representative Kemmis moved to place the bill on the consent calendar. The motion carried with the vote unanimous. It will go to the consent calendar.

HOUSE BILL NO. 194:

Mr. Weinberg reported on his investigation of affinity (about the 1st degree). Representative Scully explained about the relationships as determined in sub-section (2). It was suggested that on page 8, the section be repealed starting on line 18 and renumber. Representative Keyser moved this amendment and the motion carried with the vote unanimous.

January 24, 1979

that in his opinion the bill is unconstitutional. Representatives Keedy and Kemmis stated that the bill would not do what was wanted.

Representative Keedy offered a substitute motion "do not pass". The motion failed. The motion then reverted back "do pass". The motion carried with a roll call vote of 12 to 7.

Yes: Anderson
Conroy
Curtiss
Daily
Holmes
Iverson
Keedy
Keyser
Pavlovich
Seifert
Uhde
Teague

No: Day
Eudaily
Kemmis
Lory
Rosenthal
Roth
Scully

SENATE BILL NO. 63:

Representative Lory moved "be concurred in". The motion carried with the vote

unanimous.

HOUSE BILL NO. 238:

Mr. Weinberg offered a small clean-up amendment for the committee to consider.

On page 2, line 23. Representative Eudaily moved the amendment and the motion carried with the vote unanimous.

Representative Uhde moved on page 2, line 20, to strike "6%" and insert

"11%". Representative Lory explained how the amendment would be ineffective because of the wording in an existing law. Representative Uhde then changed his amendment to "the current statutory amount". The motion carried with the vote unanimous.

Representative Scully suggested that the Department be directed to send a

statement of intent to the committee. Mr. Weinberg will do so, and discussion and it was agreed by the committee members.

Representative Keyser moved to "pass for the day". The motion carried

with the vote unanimous.

HOUSE BILL NO. 242:

Representative Eudaily moved "do pass" and the motion carried with the vote

unanimous. Mr. Weinberg has amendments that were overlooked so the bill will be held for reconsideration.

January 24,

SPEAKER:

MR.

Judiciary

We, your committee on

having had under consideration HOUSE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING INFORMAL
CONTESTED CASE PROCEEDINGS; PROVIDING FOR JOINT WAIVING OF
FORMAL PROCEEDINGS; PROVIDING FOR JOINT WAIVING OF
ADMINISTRATIVE PROCEEDINGS; RESTRICTING MODIFICATION BY THE
AGENCY OF THE PROPOSAL FOR DECISION; AND AMENDING SECTIONS
2-4-601, 2-4-603, AND 2-4-621, MCA."

Respectfully report as follows: That HOUSE

Introduced copy, be amended as follows:

1. Page 3, lines 8 through 11.

Following: "examiner"

Strike: remainder of subsection (1)(a) in its entirety

Insert: ":

2. Page 3.

Following: line 11

Insert: "(i) written or oral evidence in opposition
agency's action or refusal to act;
(ii) a written statement challenging the grounds
upon which the agency has chosen to justify
action or inaction; or
(iii) other written or oral evidence relating to
the contested case;"

AND AS AMENDED

DO PASS

BEST COPY
AVAILABLE

Forty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Judiciary-Senate

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
SB-296	1/30/79	2/5/79	2/8/79	2/7/79					
SB-301	1/31/79	2/13/79	2/19/79			2/18/79			
SB-322	1/31/79	2/7/79	2/8/79		2/8/79				
SB-214	1/31/79	2/6/79	2/19/79			2/18/79			
SB-12	1/31/79	2/8/79	+ in vote taken to (House) Senate						
HB-184	1/31/79	2/23/79	2/23/79				3/23/79		
HB-144	1/31/79	2/23/79	2/23/79					2/23/79	
HB-203	1/31/79	2/28/79	3/1/79						3/1/79
HB-223	1/31/79	2/28/79	3/6/79					3/1/79	
HB-225	1/31/79	2/28/79	^{Tabled} 2/28/79						
HB-226	1/31/79	2/28/79	2/28/79				2/28/79		
HB-229	1/31/79	3/1/79	3/2/79					3/1/79	
HB-242	1/31/79	3/1/79	3/2/79					3/1/79	
HB-270	1/31/79	3/2/79	3/8/79				3/8/79		
HB-308	1/31/79	3/2/79	3/2/79				3/2/79		
HB-252	2/1/79	3/1/79	3/6/79						3/6/79

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 1, 1979

AUG 10 1979

OF MONTANA

The forty-seventh meeting of the Senate Judiciary Committee was called to order on the above date in Room 331 of the Capitol Building by Senator Everett R. Lensink, chairman at 9:30 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 258:

This is an act to require typed or printed names below the signatures on an instrument which must be recorded and to prohibit the recording of any instrument not meeting such requirement. Representative Robbins gave a brief explanation of this bill and introduced John Bell, who represents the Montana Association of County Clerks and Recorders.

Mr. Bell stated that all too often signatures are totally illegible and this causes vast problems. He showed the committee an example of handwriting that could not be read.

There were no further proponents and no opponents, and Senator Lensink stated that he felt the wording should be fixed up. There being no further questions or comments, the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 242:

This is an act creating informal contested case proceedings; providing for joint waiving of formal proceedings; providing for joint waiving of administrative proceedings; restricting modification by the agency of the proposal for decision, etc. Representative Harper, District 30, Helena, stated that this was an administrative code committee bill and he gave an explanation of this bill.

Bob Pyfer, staff attorney for the Legislative Council, gave a further explanation of this bill.

There were no further proponents and no opponents.

Senator Brown questioned if section 4 was originally part of the bill, and Representative Harper said that it was. Senator Brown said that this has nothing to do with informal proceedings, and he was wondering if the title encompasses that. He stated that you are entitling them to attorney's fees which it does not do now. Representative Harper stated that this is included in

"restricting modification by the agency of the proposal for decision", but he said he would leave it up to the committee. Senator Brown asked if he would have any objection to amending this, and Representative Harper said he had no objections.

There were no further questions or comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 259:

This is an act permitting an agency to elect to use hearing examiners from the legal services unit within the attorney general's office or from another agency; defining the timely filing of an affidavit of bias, providing that the decision of the hearing examiner is final in certain circumstances, etc. Representative Tropila gave an explanation of this bill and he introduced Bob Pyfer, staff attorney for the Legislative Council.

Mr. Pyfer gave additional information in regard to this bill, and he said that the House Judiciary Committee added an amendment on page 3.

Roger Tippy, speaking for himself, gave a statement in support

There were no further proponents and no opponents.

Senator Brown questioned what would happen when four out of five of the officials have been disqualified; and by law, you must have a quorum to make a decision. Mr. Pyfer stated that this did come up and it seemed a bit awkward trying to come up with the language involved and they decided to just cover the particular problem.

Richard Gillespie, from the Department of Public Instruction, stated that his research indicates that where a majority or all the members are disqualified from the hearing, the courts have developed a thing called the "doctrine of necessity", which is alive and well in Montana. This says that the procedure cannot be frustrated and that these disqualified people may make a decision that is subject to review.

Senator Turnage noted that the amendment on page 3 had a peculiar application to the public instruction office. Senator Brown questioned if this could be amended to limit it to sole-member agencies.

Senator Turnage stated that the House struck out "bias or prejudice exists" and he felt that this should have stayed in there -- that there are no standards at all right now. Mr. Gillespie said that on lines 14 and 15 on page 2, they added "lack of independence, disqualification by law".

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 1, 1979

The forty-eighth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in Room 331 of the Capitol Building on the above date at 4:28 p.m.

ROLL CALL:

All members were present with the exception of Senators Healy and Anderson, who were excused.

DISPOSITION OF HOUSE BILL 203:

Senator Turnage moved that this bill be concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 223:

Joan Mayer from the Legislative Council offered some amendments for this bill, and she stated that she thought these amendments would make this bill worse.

Senator O'Hara stated that he thought there was some need for this. He said that an operator called in and tied up the line for one-half hour and he claimed that he was holding someone hostage. Senator Towe stated that the reporter did not realize the fellow was there; and the man, who was holding the hostage, picked up the phone. Senator O'Hara said that that was not the way he heard it.

Senator Towe stated that this would allow them to cut the line or pull the plug. Senator Van Valkenburg said that this allows the law enforcement people to listen in on any phone conversation.

Senator Towe moved that the bill be amended on page 3, line 11, by striking "(3)" and inserting "Section 2. There is a new section which reads as follows: Code and further amend page 4, following line 4, by inserting the following new language: Section 3. Note to codifier: Section 2 should be codified in part 1, chapter 6 of title 69, and further amend on page 1, line 12, strike subsection 3 and insert (Section 2). The motion carried unanimously.

Senator Turnage moved that the small amendment which was proposed by Ma Bell be adopted. The motion carried unanimously.

17

Senator Turnage moved that the bill be concurred in as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 224:

Senator Van Valkenburg moved the bill be amended by striking "arrest" on line 23 and inserting in lieu thereof "arraignment unless such person has left the state of Montana and in such case the offense is committed unless the person is returned prior to arrest." Senator Brown stated that Tom Honzel said that arraignment wouldn't do it. The motion carried unanimously.

Senator Van Valkenburg moved that the bill be concurred in as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 258:

Senator Turnage moved that the bill be not concurred in. He said that thousands of deeds lie in escrow in this state; and, in every instance, there has to be an acknowledgement; a typewritten name has to appear; and it would take thousands of man hours to type these names. He said that each document with an acknowledgement has a typewritten name, and he really could not understand why the clerks want this thing.

The motion carried with Senator Galt voting no.

DISPOSITION OF HOUSE BILL 242:

Senator Brown moved that this bill be amended on page 4, line 2 by striking subsection 2-4-613;. The motion carried unanimously. He further moved that the bill be amended on page 1, line 9, after "decision" that the following language be inserted "authorizing collection of attorney's fees under certain circumstances"; and further amend on page 5, line 4, after "agency" insert "in collection of attorney's fees" and on page 6, line 5 after "record" strike all the remainder of lines 5 through 8 and on page 6, after 12 insert a new subsection (5). There was some discussion and Senator Brown withdrew all his amendments.

Senator Brown moved that the bill be amended on page 6, line 5 after "record" strike all the remaining language on lines 5 through 8; and that the bill be concurred in as amended. There was some discussion. Senator Brown then moved that the bill be amended on page 6, following line 12 by adding the following new language: "New Section. Section 5. Codification. Section 3 shall be placed in chapter 4 of title 2 of M.C.A." The motion carried.

Senator Brown moved that the bill be concurred in as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 248:

Senator Towe moved that this bill be not concurred in. He stated that the Department of Institutions introduced this bill; we think it should be amended so that we don't abuse discretion; Chairman of the Board of Paroles, Hank Burgess, wanted more control in parole; you can't get furlough until two years within parole eligibility; and 41 people have been furloughed and only six failures; that parole has a failure rate of fifty per cent; and he felt that some other things are bad - if you take out the hearing, they can put any rules in they want.

Senator O'Hara stated that Senator Ryan talked to him quite length, and he said that he is not sold on the program whatsoever. He said that the administrator, Carolyn Zimmet, was to come up to Great Falls for some meeting and she couldn't get a babysitter; and he just didn't feel the program would work.

Senator Brown said that he agreed that the bill should die except for one thing - considering parole, they have to provide for their own counsel; the law right now requires the state provide counsel; and it does amend it so that the prisoner is responsible.

Senator Towe said that at the prevailing rate of pay, we should require a minimum wage.

Joan Mayer suggested that maybe there should be a substitute bill. No action was taken on this bill.

DISPOSITION OF HOUSE BILL 259:

Senator Brown stated his problem with this bill is just with that last section and the way it is worded, and he felt that they are going to get in a hassel.

Joan Mayer, staff attorney for the Legislative Council, stated that Bob Pyfer said that apparently federal law prohibits the superintendent to act in some of these situations. Senator Brown said that she would just have to disqualify herself.

Senator Turnage moved that the bill be amended by striking all the language on page 3. The motion carried unanimously.

Evening
Date 3/1/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)			✓
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)			✓

Each Day Attach to Minutes.

STANDING COMMITTEE REPORT

March 2

19 79

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 242

Respectfully report as follows: That House Bill No. 242,

third reading bill, be amended as follows:

1. Page 4, line 2.
Strike: "subsection"

2. Page 6, lines 5 through 8.
Following: "record." on line 5
Strike: remainder of line 5 through line 8

3. Page 6
Following: line 12
Insert: "Section 5. THERE IS A NEW MCA SECTION THAT READS:
"Section 5. Codification. Section 3 is intended to be
codified as an integral part of Title 2, chapter 4, and
the provisions contained in Title 2, chapter 4, apply to
section 3."

And, as so amended,
BE CONCURRED IN

DO PASS:

90.

HOUSE BILL NO. 242

INTRODUCED BY HARPER, RAMIREZ, TROPILA

BY REQUEST OF THE ADMINISTRATIVE CODE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING INFORMAL
CONTESTED CASE PROCEEDINGS; PROVIDING FOR JOINT WAIVING OF
FORMAL PROCEEDINGS; PROVIDING FOR JOINT WAIVING OF
ADMINISTRATIVE PROCEEDINGS; RESTRICTING MODIFICATION BY THE
AGENCY OF THE PROPOSAL FOR DECISION; AND AMENDING SECTIONS
2-4-601, 2-4-603, AND 2-4-621, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-601, MCA, is amended to read:

"2-4-601. Notice. (1) In a contested case, all parties
shall ~~must~~ be afforded an opportunity for hearing after
reasonable notice.

(2) The notice shall ~~must~~ include:

(a) a statement of the time, place, and nature of the
hearing;

(b) a statement of the legal authority and
jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the
statutes and rules involved;

(d) a short and plain statement of the matters
asserted. If the agency or other party is unable to state

the matters in detail at the time the notice is served, the
initial notice may be limited to a statement of the issues
involved. Thereafter, upon application, a more definite and
detailed statement shall ~~must~~ be furnished.

~~(e) a statement that a formal proceeding may be waived
pursuant to 2-4-601.~~"

Section 2. Section 2-4-603, MCA, is amended to read:

"2-4-603. Informal disposition ~~and hearings~~ ~~--- waiver~~
~~of administrative proceedings.~~ (1) Unless precluded by law,
informal disposition may be made of any contested case by
stipulation, agreed settlement, consent order, or default.

~~(2) Except as otherwise provided, parties to a
contested case may jointly waive in writing a formal
proceeding under this part. The parties may then utilize
informal proceedings under [section 3]. Parties to contested
case proceedings held under Title 37 or under any other
provision relating to licensure to pursue a profession or
occupation may not waive formal proceedings.~~

~~(3) If a contested case does not involve a disputed
issue of material fact, parties may jointly stipulate in
writing to waive contested case proceedings and may directly
petition the district court for judicial review pursuant to
2-4-102. The petition shall contain an agreed statement of
facts and a statement of the legal issues or contentions of
the parties upon which the court, together with the~~

ec

1 ~~additions it may consider necessary to fully present the~~
2 ~~issues, may make its decision."~~

3 NEW SECTION. Section 3. Informal proceedings. (1) In
4 proceedings under this section, the agency shall, in
5 accordance with procedures adopted under 2-4-201:

6 (a) give affected persons or parties or their counsel
7 an opportunity, at a convenient time and place, to present
8 to the agency or hearing examiner; ~~written or oral--evidence~~
9 ~~in--opposition-to-the-agency's-action-or-refusal-to-act-or-a~~
10 ~~written-statement-challenging-the--grounds--upon--which--the~~
11 ~~agency-has-chosen-to-justify-its-action-or-inaction;~~

12 (II) WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE
13 AGENCY'S ACTION OR REFUSAL TO ACT;

14 (III) A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON
15 WHICH THE AGENCY HAS CHOSEN TO JUSTIFY ITS ACTION OR
16 INACTION; OR

17 (III) OTHER WRITTEN OR ORAL EVIDENCE RELATING TO THE
18 CONTESTED CASE;

19 (b) if the objections of the persons or parties are
20 overruled, provide a written explanation within 7 days.

21 (2) The record must consist of:

22 (a) the notice and summary of grounds of the
23 opposition;

24 (b) evidence offered or considered;

25 (c) any objections and rulings thereon;

1 (d) all matters placed on the record after ex parte
2 communication pursuant to subsection 2-4-613;

3 (e) a recording of any hearing held, together with a
4 statement of the substance of the evidence received or
5 considered, the written or oral statements of the parties or
6 other persons, and the proceedings. A party may object in
7 writing to the statement or may order at his cost a
8 transcription of the recording, or both. Objections shall
9 become a part of the record.

10 (3) Agencies shall give effect to the rules of
11 privilege recognized by law.

12 (4) In agency proceedings under this section,
13 irrelevant, immaterial, or unduly repetitious evidence must
14 be excluded but all other evidence of a type commonly relied
15 upon by reasonably prudent persons in the conduct of their
16 affairs is admissible, whether or not such evidence is
17 admissible in a trial in the courts of Montana. Any part of
18 the evidence may be received in written form, and all
19 testimony of parties and witnesses must be made under oath.
20 Hearsay evidence may be used for the purpose of
21 supplementing or explaining other evidence, but it is not
22 sufficient in itself to support a finding unless it is
23 admissible over objection in civil actions.

24 (5) A party may petition for review of an informal
25 agency decision pursuant to part 7 of this chapter.

23

Section 4. Section 2-4-621, MCA, is amended to read:

"2-4-621. When absent members render decision -- proposal for decision and opportunity to submit findings and conclusions -- modification by agency. (1) When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case--or read--the record, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision.

(2) The proposal for decision shall must contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing unless he becomes unavailable to the agency.

(3) The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or

that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete records. In the event a court in reversing an agency's order finds that the agency action was done in bad faith or maliciously the court may award attorney fees and costs to the aggrieved prevailing party.

(4) A hearing officer who is a member of an agency adjudicative body may participate in the formulation of the agency's final order, provided he has completed all his duties as hearing officer."

SECTION 5. CODIFICATION. SECTION 3 IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 2, CHAPTER 4, AND THE PROVISIONS CONTAINED IN TITLE 2, CHAPTER 4, APPLY TO SECTION

3.

-End-

he